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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36345, July 31, 1991, unless otherwise noted.

Subpart 217.1—Multiyear Contracting

SOURCE: 63 FR 11529, Mar. 9, 1998, unless otherwise noted.

217.103 Definitions.

As used in this subpart—

Advance procurement means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

Congressional defense committees means—

- (1) The Committee on Armed Services of the Senate;
- (2) The Committee on Appropriations of the Senate;
- (3) The Subcommittee on Defense of the Committee on Appropriations of the Senate;
- (4) The Committee on Armed Services of the House of Representatives;
- (5) The Committee on Appropriations of the House of Representatives; and
- (6) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (10 U.S.C. 2801(c)(2)).

[68 FR 43332, July 22, 2003, as amended at 79 FR 35700, June 24, 2014]

217.170 General.

(a) Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost (10 U.S.C. 2306b(1)(7); section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts).

(b) Any requests for increased funding or reprogramming for procurement

of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under 217.172(g)(2) (10 U.S.C. 2306b(i)(1)).

(c) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306b(l)(6), 10 U.S.C. 2306c(d)(3), section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts).

(d) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

(e)(1) DoD must provide notification to the congressional defense committees at least 30 days before entering into a multiyear contract for certain procurements, including those expected to—

(i) Employ an unfunded contingent liability in excess of \$20 million (see 10 U.S.C. 2306b(l)(1)(B)(i)(II), 10 U.S.C. 2306c(d)(1), and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts);

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year of the contract (10 U.S.C. 2306b(l)(1)(B)(i)(I));

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 10 U.S.C. 306b(l)(1)(B)(ii) and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of \$100 million (see 10 U.S.C. 2306c(d)(4), 10 U.S.C. 2306b(g), and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts).

(2) A DoD component must submit a request for authority to enter into a multiyear contract described in paragraphs (e)(1)(i) through (iv) of this section as part of the component's budget submission for the fiscal year in which the multiyear contract will be initi-

ated. DoD will include the request, for each candidate it supports, as part of the President's budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (section 8008(b) of Pub. L. 105–56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (e)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees (see section 8008(b) of Pub. L. 105–56).

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (e)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

(5) If the budget for a contract that contains a cancellation ceiling in excess of \$100 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(i) The notification required by paragraph (e)(1) of this section shall include—

(A) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(B) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 2306b(g) and 10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the

Office of Management and Budget at least 14 days before contract award.

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 7439, Feb. 14, 2003; 70 FR 24324, May 9, 2005; 71 FR 75892, Dec. 19, 2006; 75 FR 9115, Mar. 1, 2010; 75 FR 54526, Sept. 8, 2010; 75 FR 45073, Aug. 2, 2010; 76 FR 58152, Sept. 20, 2011]

217.171 Multiyear contracts for services.

(a) The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated (10 U.S.C. 2306c). Covered services are—

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high-quality instructor skills (*e.g.*, training for pilots and aircrew members or foreign language training);

(4) Base services (*e.g.*, ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal); and

(5) Environmental remediation services for—

(i) An active military installation;

(ii) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or

(iii) A site formerly used by DoD.

(b) The head of the agency must be guided by the following principles when entering into a multiyear contract for services:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, “useful commercial life” means the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.

(2) Consider the desirability of obtaining an option to extend the term of the contract for a reasonable period

not to exceed 3 years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) Consider the desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost.

(c) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

(1) There will be a continuing requirement for the services consistent with current plans for the proposed contract period;

(2) Furnishing the services will require—

(C)(2) A substantial initial investment in plant or equipment; or

(ii) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

(d) The head of an agency may not initiate a multiyear contract for services if the value of the multiyear contract exceeds \$625.5 million unless a law specifically provides authority for the contract (10 U.S.C. 2306(c)).

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 43333, July 22, 2003; 70 FR 24324, May 9, 2005; 71 FR 75892, Dec. 19, 2006; 75 FR 45073, Aug. 2, 2010; 76 FR 58153, Sept. 20, 2011; 76 FR 76319, Dec. 7, 2011]

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law (10 U.S.C. 2306b).

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105-1(b), the use of such a contract will promote the national security of the United States (10 U.S.C. 2306b(a)(6)).

(c) Multiyear contracts in amounts exceeding \$500 million must be specifically authorized by law (10 U.S.C. 2306b)